REMARKS

I. Introduction

This paper addresses the Office Action of February 25, 2008, in connection with the above-captioned application. A Notice of Appeal was filed on May 30, 2008 but no decision has been rendered. Concurrently herewith, Applicant is filing a Request for Continued Examination pursuant to 37 C.F.R. § 1.114 and paying the required fee set forth in § 1.17(e). Therefore, pursuant to 37 C.F.R. § 1.114(d), Applicant requests that the finality of the February 25, 2008 Office Action be withdrawn, that the appeal be withdrawn, and that the Office consider Applicant's current Amendment and Remarks.

Claims 1-90 are currently pending. New claims 91-93 have been added. Claims 19 to 68 were previously withdrawn from consideration. Claims 1-18 and 69-90 have been rejected. Claims 1,4, 5, 10, and 69 are amended herein. The present amendment is supported by the original disclosure. No new matter has been added.

In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested. In addition, Applicant respectfully requests the Office to enter the amendments found in Applicant's response to the Office Action filed on May 27, 2008, and Applicant reasserts each of the arguments presented in that response herein.

II. Rejection of Claims 1-6,10-15, 69, and 84-90 under 35 U.S.C. § 103(a)

Claims 1-6, 10-15, 69, and 84-90 stand rejected under 35 U.S.C. § 103 over U.S. Patent No. 5,471,039 ("Irwin"), in view of U.S. Patent No. 6,338,434 ("Wilz"). Although Applicant disagrees with the rejection, independent claims 1, 10, and 69 are amended herein. The present claims are patentable over the proposed combination of Irwin and Wilz for at least the following reasons.

Example embodiments of the present invention provide for a platform-independent execution environment for executing embedded instructions, where the instructions may be embedded in a barcode. Such barcodes may include instructions and/or data that may be processed by a virtual machine, in accordance with embodiments of the present invention. Notably, in example embodiments of the present invention, executable program instructions themselves may be encoded in barcodes.

For example, in example embodiments of the present invention, an embedded barcode may include instructions for processing a game selection slip. In such an example, a user

may wish to play a pick-six game and an embedded barcode on a game selection slip may include instructions so that the terminal can verify that the selection slip was completed correctly by the user. For example, the terminal may read the barcode and determine that the slip is for a pick six game. The terminal may process the instructions embedded in the barcode included on the slip and verify that all six numbers, in this example, were selected properly. Notably, in example embodiments, such terminals may not need to be re-programmed to process a new type of game. For example, if a new game such as a pick five or pick seven game is introduced, gaming terminals may not need to be programmed to process gaming slips for the new game. Rather, barcodes on the new slips may simply include instructions that will instruct the terminal to process the selection slip for the new game. For example, the instructions may inform the terminal to generate a pick five or pick seven game, to verify that the numbers were properly selected, and/or or to perform other checks related to processing the selection slip and generating a ticket. In accordance with example embodiments of the present invention then, programming of terminals to process new types of games may be avoided and savings of costs and/or other resources may be realized.

Accordingly, independent claim 1, as presented, recites:

> A method for validating a ticket associated with a game of chance, comprising:
>
> reading, at a terminal, **a barcode encoded with** data and **a first program comprising a plurality of instructions,** the plurality of instructions **including a conditional instruction,** wherein the barcode is included on the ticket;
>
> based on the encoded first program and **responsive to execution of the conditional instruction**, sending the data and a trigger to execute a check validity program to validate the data; and
>
> responsive to a determination of the data being valid by the check validity program, validating the ticket.

The proposed combination does not teach or suggest all the features of claim 1. For example, the references do not teach or suggest "reading, at a gaming terminal, a **barcode encoded with a first program**, let alone a program that includes **a conditional instruction**, such as a conditional branch or "if" instruction. The Office Action admits that Irwin does not teach or suggest the claim element, asserting that Wilz describes the claimed feature. Office Action at 3.

As argued previously, Wilz, does not teach or suggest "a **barcode encoded with** data and **a first program".** Moreover, and in light of the present amended claim language, Wilz certainly does not teach or suggest an encoded **conditional instruction**. Nothing in Wilz teach or suggests any sort of control or conditioning at all. Rather, while Wilz may generally describe barcodes containing URLs or lines of HTML. As argued previously, Applicant submits these are not the recited first program.. Moreover, Wilz' barcodes have no provision whatsoever for conditional instructions. Notably, although Wilz may generally refer to Java Applets, Wilz describes only encoding HTML within the barcode itself which contains a link to a Java Applet stored remotely. See, e.g., Wilz, col. 32, l. 19-41. Accordingly, Wilz does not teach or suggest a ticket with "a barcode encoded with ... a ... program ... including at least one **conditional instruction."** Accordingly, adding Wilz to Irwin does not yield Applicant's claim 1. Therefore, for at least the reasons presented above, independent claim 1 is patentable over the proposed combination of Irwin and Wilz.

Independent claim 10, as presented, recites:

> A system for validating a ticket associated with a game of chance, the system comprising:
>
> a local terminal;
>
> a device coupled to the terminal **to read a barcode encoded** with data and **a first program comprising a plurality of instructions**, the instructions **including a conditional instruction**, wherein the barcode is included on the ticket;
>
> a remote terminal to receive the data and a trigger from the local terminal based on the encoded first program and responsive to execution of the conditional instruction, wherein the trigger is to execute a check validity program at the remote terminal and responsive to a determination of the data being valid by the check validity program, the remote terminal to send a validation signal to the local terminal and in response to the validation signal, the local terminal to validate the ticket.

The proposed combination does not teach or suggest all the features of claim 10. For example, claim 10 recites "a device coupled to the terminal **to read a barcode encoded with data and a first program comprising a plurality of instructions, including at least one conditional instruction**, wherein the barcode is included on the ticket." Accordingly, for at least reasons similar to those presented above in connection with claim 1, claim 10 is patentable over the proposed combination of Irwin and Wilz.

Independent claim 69, as presented, recites:

> .A method for validating a ticket associated with a game of chance, comprising:
>
> reading, at a terminal, **a barcode encoded** with data and **a first program comprising a plurality of instructions**, the instructions **including a conditional instruction**, wherein the barcode is included on the ticket;
>
> processing the first program encoded in the barcode;
>
> **responsive to execution of the conditional instruction**, determining that the instructions have been processed successfully; and
>
> responsive to the determination that the instructions have been processed successfully, validating the ticket.

The proposed combination does not teach or suggest all the features of claim 69. For example, claim 69 recites **"reading, at a gaming terminal, a barcode encoded ... a first program ..including at least one conditional instruction"**, wherein the barcode is included on the ticket." This feature is not found in either Irwin or Wilz. The performance of any activity responsive to execution of a conditional instruction, let along a determination that the instructions have been processed successfully, is also not found in Irwin or Wilz. Accordingly, for at least reasons similar to those presented above in connection with claim 1, claim 69 is patentable over the proposed combination of Irwin and Wilz.

In addition, claims 2-9, 72-75, and 84-88 depend from claim 1; claims 11-18, 76-79, and 89 depend from claim 10; and claims 70-71, 80-83, and 90 depend from claim 69. It is respectfully submitted that the dependent claims are patentable over the proposed combination of references for at least the reasons presented above in connection with independent claims 1, 10, and 69.

Moreover, as explained in the May 27, 2008 response, the proposed combination of Wilz and Irwin is improper. "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR v. Teleflex*, 550 U.S. 398, 82 USPQ2d at 1396. The Office Action proposes a combination of Wilz with Irwin, proposing that Wilz' invocation of a website address should be included in Irwin's bar code. There is no explanation of how Irwin's bar code could actually be made to function using Wilz' approach. To the extent the proposed combination is understood, the proposed combination appears to totally alter the operation of Irwin without explanation of how or why this combination would be made to work. If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. MPEP 2243.01 (citing *In re Ratti*, 270 F.2d 810 (CCPA 1959)).

To the extent the proposed combination is understood, the Office Action is not believed to provide any evidence of how an ordinary artisan would be lead by common sense to the approach suggested in the Office, because Irwin's system already verifies Irwin's ticket using Irwin's existing bar code. Thus the combination is not believed to provide the purported benefits suggested in the Office Action. The Office Action asserts that the combination would be made "in order to quickly instigate an actions of verification without the need to go through complicated systems by directly providing instruction on the barcode that leads to the validation program." But Irwin's system already provides direct access to Irwin's validation program which is provided in Irwin's terminal. Accordingly, the proposed combination would not be tried by an ordinary artisan using common sense. Rather, the only reason to make such a combination appears to be to pick and choose features in an attempt to provide all the features of Applicant's claim 1. This sort of hindsight reconstruction cannot be used to make out a proper prima facie case of obviousness.

Moreover, Wilz teaches away from the proposed combination, as Wilz suggests that even encoding simple URL addresses are the limit of what is possible in his system, since he suggests that special coding techniques are needed even to accommodate just URLs. See, e.g., Wilz, col. 12, l. 40-46. This suggests that an ordinary artisan consulting Wilz would not be lead, and in fact would be lead away from contemplating the inclusion of full-fledged programs in bar codes based on the teachings of Wilz.

For at least the reasons present above, it is respectfully submitted that claims 1-6, 10-15, 69, and 84-90 are patentable over the proposed combination of Irwin and Wilz. Withdrawal of the rejection is respectfully requested.

Separately and independently, claims 4 and 5, as amended, recite connecting, to either a web site or a remote terminal, responsive to execution of a conditional instruction. This feature is neither taught nor suggested by Irwin or Wilz. These claims should therefore be allowable on the basis of this additional feature.

III. Rejection of Claims 74, 78, and 82 under 35 U.S.C. § 103(a)

Claims 74, 78, and 80 were rejected under 35 U.S.C. § 103(a), as being unpatentable over Irwin and Wilz, in view of U.S. Patent No. 4,825,058 ("Poland"). Claims 74, 78, and 80 are patentable over the proposed combination of Irwin, Wilz, and Poland for at least the reasons presented below.

Claim 74 depends from claim 1, claim 78 depends from claim 10, and claim 82 depends from claim 69. As explained above, the proposed combination of Irwin and Wilz

does not teach or suggest each of the elements of independent claims 1, 10, and 69, as presented. The Office Action does not suggest that Poland teaches or suggests the elements of claims 1, 10, or 69 not taught or suggested by Irwin and Wilz, and it is respectfully submitted that Poland does not teach or suggest those elements. Accordingly, it is respectfully submitted that independent claims 1, 10, and 69 are patentable over the proposed combination of Irwin, Wilz, and Poland, as are dependent claims 74, 78, and 80.

Also, as explained in the May 27, 2008 response, the proposed combination of Irwin, Wilz, and Poland is improper. The Office Action posits that Poland would be combined with Wilz and Irwin "in order to ensure that the instructions provided by the bar code can be properly executed, which avoids any erroneous operation." However regarding the reading of a barcode encoded with a program comprising a plurality of instructions, the Poland reference only discusses reading a single instruction at a time. That is, the Poland reference never reads a plurality of instructions of a program from a single barcode. Instead, the Poland reference either reads a single instruction in a single barcode, or else actually requires reading multiple barcodes to obtain only a single instruction. See, for example, Poland col. 6, l. 60 - col. 7, l. 63, and col. 8, l. 48 - col. 9, l. 54, which in part reads as follows (emphasis added below):

> ... there are three different types of commands. The first type is a single scan command that includes a memory manipulation opcode, an address and an argument to complete a configuration selection. The second type of command requires two scans, a memory manipulation opcode with an address, followed by a separate numerical or single character argument to complete a configuration selection. The third type of command requires multiple scans, a memory manipulation opcode with an address, followed by a string of single character arguments from separate tags, and is terminated by scanning an end of characters tag.

Thus, the Poland reference never discloses or suggests reading a barcode encoded with a program comprising a plurality of instructions.

Furthermore, the Poland reference even effectively teaches away from the proposed combination, because Poland teaches away from reading of a plurality of instructions from a single barcode. For example, at col. 7, l. 64 - col. 8, l. 34, the Poland reference extols the virtues of its simple command set which "conserves memory space in the operating system and provides efficient operation of the interpreter." Thus, one of ordinary skill in the art would be dissuaded from the idea of encoding a plurality of instructions on a single barcode based on a fair reading of the Poland reference. That is, if the Poland reference is concerned with reducing the complexity of even a single command read by the barcode reader, one of

ordinary skill in the art would surely be dissuaded from attempting to read a plurality of commands at once by such a barcode reader. (The Office is respectfully reminded that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)).

For at least the reasons present above, it is respectfully submitted that claims 74, 78, and 82 are patentable over the proposed combination of Irwin and Wilz. Withdrawal of the rejection is respectfully requested.

IV. Rejection of Claim 7 under 35 U.S.C. § 103(a)

Claim 7 was rejected under 35 U.S.C. § 103(a), as being unpatentable over Irwin and Wilz, in view of U.S. Patent No. 6,340,331 ("Saunders"). Claim 7 is patentable over the proposed combination of Irwin, Wilz, and Saunders for at least the reasons presented below.

Claim 7 depends from claim 1. As explained above, the proposed combination of Irwin and Wilz does not teach or suggest each of the elements of independent claim 1, as presented. The Office Action does not suggest that Saunders teaches or suggests the elements of claim 1 not taught or suggested by Irwin and Wilz, and it is respectfully submitted that Saunders does not teach or suggest those elements. Accordingly, it is respectfully submitted that independent claim 1 is patentable over the proposed combination of Irwin, Wilz, and Saunders, as is dependent claim 7. Withdrawal of the rejection is respectfully requested.

V. Rejection of claims 8, 9, 16, 17, 18, 70 and 71 under 35 U.S.C. § 103(a)

Claims 8, 9, 16, 17, 18, 70 and 71 were rejected under 35 U.S.C. § 103(a), as being unpatentable over Irwin and Wilz, in view of U.S. Patent No. 5,337,358 ("Axelrod"). Claims 8, 9, 16, 17, 18, 70 and 71 are patentable over the proposed combination of Irwin, Wilz, and Axelrod for at least the reasons presented below.

Claims 8 and 9 depend from claim 1, claims 16-18 depend from claim 10, and claims 70 and 71 depend from claim 69. As explained above, the proposed combination of Irwin and Wilz does not teach or suggest each of the elements of independent claims 1, 10, and 69, as presented. The Office Action does not suggest that Axelrod teaches or suggests the elements of claims 1, 10, or 69 not taught or suggested by Irwin and Wilz, and it is respectfully submitted that Axelrod does not teach or suggest those elements. Accordingly, it is respectfully submitted that independent claims 1, 10, and 69 are patentable over the

proposed combination of Irwin, Wilz, and Axelrod, as are dependent claims 8, 9, 16, 17, 18, 70 and 71. Withdrawal of the rejection is respectfully requested.

VI. Rejection of claims 72, 73, 75-77, 79-81, and 83 under 35 U.S.C. § 103(a)

Claims 72, 73, 75-77, 79-81, and 83 were rejected under 35 U.S.C. § 103(a), as being unpatentable over Irwin and Wilz, in view of U.S. Patent No. 6,915,271 ("Meyer"). Claims 72, 73, 75-77, 79-81, and 83 are patentable over the proposed combination of Irwin, Wilz, and Meyer for at least the reasons presented below.

Claims 72, 73, and 75 depend from claim 1, claims 76, 77, and 79 depend from claim 10, and claims 80, 81, and 83 depend from claim 69. As explained above, the proposed combination of Irwin and Wilz does not teach or suggest each of the elements of independent claims 1, 10, and 69, as presented. The Office Action does not suggest that Meyer teaches or suggests the elements of claims 1, 10, or 69 not taught or suggested by Irwin and Wilz, and it is respectfully submitted that Meyer does not teach or suggest those elements. Accordingly, it is respectfully submitted that independent claims 1, 10, and 69 are patentable over the proposed combination of Irwin, Wilz, and Meyer, as are dependent claims 72, 73, 75-77, 79-81, and 83.

Although it does not appear to be asserted by the Office Action, it is specifically noted in this regard, that the proposed combination of Irwin, Wilz, and Meyer does not teach or suggest "a barcode encoded with data and a first program comprising a plurality of instructions, including at least one conditional instruction." As explained above, neither Irwin or Wilz teaches or suggests encoding "a plurality of instructions, including at least one conditional instruction" in a barcode. Although Meyer may generally describe a Java virtual machine and a Java program, Meyer also makes no reference to encoding a first program comprising a plurality of instructions, including at least one conditional instruction in a barcode. In fact, Meyer makes no reference to encoding program instructions in a barcode in any way.

Accordingly, for at least the reasons presented above, withdrawal of the rejection is respectfully requested.

VII. New Claims 91-93

Claims 91-93 depend respectively from claims 1, 10, and 69 and should therefore be allowable for at least the reasons given above for their respective parent claims. Moreover,

these claims all recite an "if" instruction, which is not encoded in a bar code in the cited references. These claims should be allowable for at least this additional reason.

CONCLUSION

In light of the foregoing, it is respectfully submitted that all of the presently pending claims are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited. While no additional fee is considered to be due, the Office is hereby authorized to charge any fees, which may arise out of the filing of this paper, or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to the deposit account of **K&L Gates LLP,** Deposit Account No. **0080570**.

The Examiner is invited to contact the undersigned at the telephone number below to discuss any matter concerning this application.

Respectfully submitted,

Dated: December 29, 2008

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